

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

Frankie Tipton,  
Plaintiff,

vs.

Romulus, Inc. d/b/a Romulus Restaurant  
Group and Lotharlo, LLC,  
Defendants.

**NO.**

**NOTICE OF REMOVAL**

Romulus, Inc. (“Romulus”), by and through undersigned counsel, hereby submits this Notice of Removal. In support, Romulus states the following:

1. Pursuant to 28 U.S.C. §§ 1332, 1441 and 1446, Romulus hereby gives notice of removal of all counts and claims asserted by Plaintiff Frankie Tipton in the civil action filed in the Ninth Judicial District, County of Curry, State of New Mexico, Cause No. D-905-CV-2022-00040.

2. Pursuant to 28 U.S.C. § 1446(a) and D.N.M.LR-Civ. 81.1(a), copies of all process, pleadings, and orders served on Romulus to date and/or filed in the Ninth Judicial District, as well as a copy of the Case docket, are attached hereto as Exhibits A through F as follows:

- Exhibit A – Complaint
- Exhibit B – Summons
- Exhibit C – Certificate of Service on Romulus, Inc.
- Exhibit D – Certificate of Service on Lotharlo, LLC
- Exhibit E – Demand for Jury Trial
- Exhibit F – Case Docket

3. Plaintiff's Complaint was filed in the Ninth Judicial District Court on February 28, 2022. Ex. A. A summons was issued to Romulus by the Ninth Judicial District Court on February 28, 2022. Ex. B. The Complaint and Summons were served on Romulus on March 1, 2022. See Ex. C. Therefore, this Notice of Removal was timely filed under 28 U.S.C. § 1446(b). See *Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 348 (1999) (holding that "a named defendant's time to remove is triggered by simultaneous service of the summons and complaint . . . but not by mere receipt of the complaint unattended by any formal service"); *Crouch v. Roberts Enterprises Invs., Inc.*, No. 20-CV-0988 SMV/CG, 2021 WL 371517, at \*2 (D.N.M. Feb. 3, 2021) (slip copy) ("The 30-day removal period does not begin until the defendant is able to intelligently ascertain removability so that in his petition for removal he can make a simple and short statement of the facts, or until the defendant has unequivocal notice of removability.") (Quotations omitted).

4. This is an action of a civil nature in which the United States District Court has diversity jurisdiction pursuant to 28 U.S.C. § 1332(a) because there is complete diversity of citizenship between the plaintiff and each defendant and the amount in controversy exceeds \$75,000.00.

5. Plaintiff Frankie Tipton, an individual, alleges in his Complaint that he is a resident of Texas. Ex. A ¶ 1. Plaintiff's counsel and independent investigation by Romulus has confirmed Mr. Tipton is domiciled in Texas. Therefore, Plaintiff is a citizen of the State of Texas under 28 U.S.C. § 1332(c)(1).

6. Romulus is a corporation incorporated only in Arizona, with its principal place of business located at 1048 N. 44th St., Ste. 210 in Phoenix, Arizona. Ex. G ¶ 3, Declaration of Denyse Lujan in Support of Notice of Removal. Therefore, under 28 U.S.C. § 1332(c)(1), Romulus is a citizen of the State of Arizona.<sup>1</sup>

7. Lotharlo, LLC is a limited liability company with four (4) members, all of whom are domiciled in California. Ex. H ¶ 4, Declaration of Mary Lotito in Support of Notice of Removal. Therefore, Lotharlo, LLC is a citizen of California for purposes of diversity jurisdiction. *Gerson v. Logan River Acad.*, 20 F.4th 1263, 1269 n.2 (10th Cir. 2021) (“[An] LLC, as an unincorporated association, takes the citizenship of all its members. And where an LLC has, as one of its members, another LLC, the citizenship of unincorporated associations must be traced through however many layers of partners or members there may be to determine the citizenship of the LLC.”) (Citation omitted) (quotations omitted).

8. A reasonable estimate of the amount that will be put at issue in the course of the litigation is in excess of \$75,000.00, exclusive of interest and costs, based on Plaintiff’s claimed medical bills alone exceeding \$75,000.00. *See Laughlin v. Kmart Corp.*, 50 F.3d 871, 873 (1995); *see also Frederick v. Farmers Underwriters Ins. Co.*,

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<sup>1</sup> The possessor of the premises at issue in this premises liability case is RMLS HOP New Mexico, L.L.C. *See* Ex. G ¶ 4. RMLS HOP New Mexico, L.L.C. has one member, RMLS HOP LLC, which has several members. *Id.* at ¶¶ 5-6. Therefore, under 28 U.S.C. § 1332(c)(1), RMLS HOP New Mexico, L.L.C. is a citizen of Arizona, Wyoming and Oklahoma. Thus, in the event the Complaint is amended to substitute in RLMS HOP New Mexico, L.L.C., there will still be diversity among the parties and this Court will have jurisdiction over this matter.

683 F.3d 1242, 1254 (10<sup>th</sup> Cir. 2012); and *Dart Cherokee Basin Operating Co., LLC v. Owens*, 135 S. Ct. 547, 554 (2014) (holding “a defendant’s notice of removal need include only a plausible allegation that the amount in controversy exceeds the jurisdictional threshold. . . [e]vidence establishing the amount is required by § 1446(c)(2)(B) only when the plaintiff contests, or the court questions, the defendant’s allegation”).

9. Pursuant to 28 U.S.C. § 1446(d), written notice of removal has been given to all adverse parties and a copy of the Notice of Removal was filed with the Clerk of the Ninth Judicial District Court contemporaneously herewith. Ex. I.

10. Both Defendants have consented to removal of this Case. Ex. G ¶ 7; Ex. H ¶ 5.

s/William M. Demlong

William M. Demlong, 150642

Loren Suddes (*pro hac vice* application forthcoming)

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*Attorneys for Defendant Romulus, Inc.*

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on the 30<sup>th</sup> day of March, 2022, a copy of the foregoing was electronically filed through the CM/ECF system, which caused the following parties or counsel to be served by electronic means, as more fully reflected on the Notice of Electronic Filing:

Jared Morris, Esq.  
Harmon, Barnett, Morris Law firm  
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Clovis, NM 88101  
*Attorneys for Plaintiff Frankie  
Tipton*

By: s/L. Gilroy